

Summit reserves the right to suspend or terminate this Program Agreement effective immediately.

- 5.5 Survival.** In the event of termination, the following provisions will survive: Section 7 (Representation and Warranties of Summit), Section 8 (Limitation on Liability), Section 9 (Notices), Section 10 (Governing Law), and Section 11 (General Provisions).

## **6. INDEMNIFICATION**

- 6.1 Indemnification of the Partner School.** To the extent permissible under applicable state law, Summit shall defend, indemnify, and hold harmless the Partner School, its officers, employees, and agents, assignees and successors-in-interest from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages, and liabilities of any kind resulting from or arising out of Summit's performance under this Program Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by the negligence, recklessness, willful misconduct, or intentional acts or omissions of Summit, its officers, employees, or agents. Such indemnification shall be subject to the limitation of liability in Section 8.
- 6.2 Indemnification of Summit.** To the extent permissible under applicable state law, the Partner School shall defend, indemnify and hold harmless Summit, its officers, employees, and agents, assignees and successor in interest from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages, and liabilities of any kind resulting from or arising out of the Partner School's performance under this Program Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligence, recklessness, willful misconduct or intentional acts or omissions of the Partner School, its officers, employees, or agents. Such indemnification shall be subject to the limitation of liability in Section 8.
- 6.3 Status and Defense of Claims.** The indemnifying Party shall keep the other Party reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the indemnified Party, at its expense, to participate in the defense or settlement of the claim, provided, however that the indemnifying Party has the sole control of the defense. The indemnified Party shall reasonably cooperate with the indemnifying Party in defending the action, and the indemnifying Party will not agree to settle or otherwise resolve the action without the consent of the indemnified Party, which consent shall not be unreasonably withheld.

## **7. REPRESENTATIONS AND WARRANTIES OF SUMMIT**

- 7.1 General.** Summit represents and warrants that the following shall be true and correct as of the Effective Date of this Program Agreement and shall continue to be true and correct during the Term of this Program Agreement:
- A. Program and Service Operation.** During the Term of this Program Agreement, Summit shall use commercially reasonable efforts to ensure that the Program and

the Services shall function properly. Summit shall use commercially reasonable efforts designed to promptly correct any failure of the Program and the Services to perform as described in this Program Agreement.

- B. Changes to Program and the Services.** From time to time, Summit may implement changes and improvements to the Services, including by conducting maintenance, updating the functionality and look of the Services, and adding or removing functionalities or features. We may also stop providing the Services to Partner School or its Users, or add or create new limits to the Services or restrict Partner School's or its Users' access to all or a part of the Service at any time.
- C. Publicity.** Summit shall not issue publicity news releases, grant press interviews, or use any Student Data or Content, including but not limited to the Partner School's logos, without the prior express written consent of a representative from the Partner School. Furthermore, Summit may not photograph or film or cause others to photograph or film within any of the Partner School facilities without the prior express written consent of Partner School.

- 7.2 Additional Obligations Regarding Treatment of Student Data.** Summit agrees to the obligations set forth in the Data Privacy Addendum regarding the handling of Student Data and Personally Identifiable Information.

## **8. LIMITATION ON LIABILITY TO PARTNER SCHOOLS**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM ANY CLAIM OR ACTION BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. SUMMIT SHALL NOT BE LIABLE FOR PARTNER SCHOOL'S INABILITY TO USE THE PROGRAM OR THE SERVICES DUE TO (I) SCHEDULED DOWNTIME, WHICH SUMMIT WILL ATTEMPT TO SCHEDULE WHEN SCHOOL IS NOT IN SESSION AND ABOUT WHICH SUMMIT WILL GIVE PARTNER SCHOOL 14 DAYS ADVANCE WRITTEN NOTICE; (II) UNAVAILABILITY DUE TO FACTORS OUTSIDE OF SUMMIT'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OF GOD, ACTS OF GOVERNMENT, FLOOD, FIRE, EARTHQUAKES, CIVIL UNREST, ACTS OF TERROR, STRIKES OR OTHER LABOR PROBLEMS (OTHER THAN THOSE INVOLVING SUMMIT'S EMPLOYEES); (III) UNAVAILABILITY THAT RESULTS FROM EQUIPMENT AND/OR SOFTWARE OF THIRD PARTIES WHERE SUCH EQUIPMENT AND/OR SOFTWARE IS NOT WITHIN THE REASONABLE CONTROL OF SUMMIT; (IV) UNAVAILABILITY CAUSED BY ABUSE OR MISUSE OF THE SERVICES OR PROGRAM (OR ANY COMPONENT THEREOF) BY PARTNER SCHOOL OR ITS USERS; OR (V) UNAVAILABILITY CAUSED BY USE OR MAINTENANCE OF THE SERVICES OR PROGRAM BY PARTNER SCHOOL IN A MANNER NOT MATERIALLY CONFORMING TO THE GUIDANCE PROVIDED BY SUMMIT OR IN THIS PROGRAM AGREEMENT. SUMMIT'S AGGREGATE LIABILITY TO THE PARTNER SCHOOL UNDER ANY THEORY OR FOR ANY REASON SHALL NOT EXCEED \$10,000.

## **9. NOTICES**

**9.1 General.** Unless stated otherwise in this Program Agreement, Terms of Service, or Data Privacy Addendum, all notices required by or relating to this Program Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, to Summit and the Partner School, including any participating school therein, if any, and addressed to Summit as set forth below or addressed to the Partner School and any school therein, if any, as set forth in Schedule I or addressed to such other address as may have given by written notice in accordance with this provision:

If to Summit:                   Summit Public Schools  
  780 Broadway Street  
  Redwood City, CA 94063  
  Attn: Summit Learning Program

All notices, communications, or consents required by or relating to this Program Agreement may also be communicated by electronic mail to Summit at [support@summitlearning.org](mailto:support@summitlearning.org) and to the Partner School at the email address set forth on Schedule I, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Notices shall be effective three (3) business days after receipt of delivery by the U.S. Post Office or one (1) day after deposit with a commercial overnight courier.

**9.2 Principal Contact Person.** Any notices, communications, or consents required by or relating to this Program Agreement from Summit to the Partner School will be sent to the attention of the person(s) listed on Schedule I (the “Principal Contact Person”). The Principal Contact Person shall be authorized to act on behalf of the Partner School and to make decisions for the Partner School.

## **10. GOVERNING LAW**

This Program Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties further submit to and waive any objections to the personal jurisdiction of and venue in San Mateo County, California for any litigation arising out of this Program Agreement.

If the Partner School is a United States public and accredited educational institution, then (a) this Program Agreement will be governed and construed in accordance with the laws of the state (within the United States) in which the Partner School is domiciled, except that body of law concerning conflicts of law; and (b) any litigation or other dispute resolution between the Partner School and Summit arising out of or relating to this Program Agreement, the Services, or the Partner School’s relationship with Summit will take place in federal court within the Northern District of California, and the Partner School and Summit hereby consent to the personal jurisdiction of and exclusive venue of the Northern District of California unless such consent is expressly prohibited by the laws of the state in which the Partner School is domiciled.

## 11. GENERAL PROVISIONS

- 11.1 Entire Agreement.** This Program Agreement and exhibits attached hereto constitute the final and entire agreement between the Parties regarding its subject matter, and supersede all other related oral or written agreements or policies. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege unless expressly waived in writing and signed by a duly authorized representative of Summit. No single waiver shall constitute a continuing or subsequent waiver.
- 11.2 Relationship of the Parties.** This Program Agreement will not be construed as creating any agency relationship, or a general partnership, limited partnership, limited liability partnership, joint venture, fiduciary duty, or any other form of legal association between the Partner School and Summit, and the Partner School will not represent to the contrary, whether expressly, by implication, appearance or otherwise. Except as otherwise expressly provided in this Program Agreement, this Program Agreement is not for the benefit of any third parties. Neither Party will make any commitment, by contract or otherwise, binding upon the other Party or present that it has the authority to do so.
- 11.3 Assignment; Resale; No Waiver.** This Program Agreement will be binding upon and inure to the benefit of all of Summit's and the Partner School's successors and assigns, which will be bound by all of the obligations of their predecessors or assignors.
- 11.4 Modifications and Severability.** This Program Agreement may be modified only: (a) by a written amendment signed by both Parties, or (b) to the extent expressly permitted by this Program Agreement (e.g., by Summit upon notice to the Partner School). In the event that the Partner School refuses to accept such changes, Summit will have the right to terminate this Program Agreement in accordance with Section 5 hereof. If any provision of this Program Agreement or the exhibits attached hereto is found to be unenforceable or invalid, such unenforceability or invalidity will not render this Program Agreement unenforceable or invalid as a whole and, in such event, such provision is to be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.
- 11.5 Material Modifications to Privacy Policy.** If Summit makes any material changes to its Privacy Policy, it shall provide advance notice via electronic communication to the Partner School's Principal Contact Person before the effective date of such changes.
- 11.6 Material Modifications to Terms of Service.** If Summit makes any material changes to the Terms of Service, it shall provide advance notice via electronic communication to the Partner School's Principal Contact Person before the effective date of such changes.
- 11.7 Priority of Agreements.** This Program Agreement shall govern the relationship between the Partner School and Summit. If there is a conflict between this Program Agreement and the Terms of Service, Data Privacy Addendum, or any other agreement between the Partner School and Summit (collectively, "Other Documents"), the terms of this Program

Agreement shall apply and take precedence unless specifically provided otherwise in this Program Agreement or the Other Documents. In the event of any conflict between the terms of the Other Documents, the conflict shall be resolved in favor of the Terms of Service, unless specifically provided otherwise in the Other Documents, such as with respect to the treatment of Student Data for which the terms of the Data Privacy Addendum shall apply and take precedence.

- 11.8 Section Headings.** Section headings have been inserted in this Program Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not part of this Program Agreement and will not be used in the interpretation of any provisions of this Program Agreement.

IN WITNESS WHEREOF, the undersigned have duly authorized, executed and delivered this Program Agreement as of the date written below.

**SUMMIT PUBLIC SCHOOLS**

By (Signature):

Name (Printed):

Title:

District of Columbia PS  
as **PARTNER SCHOOL**

By (Signature):

Name (Printed): **Amanda Alexander**

Title: Interim Chancellor

Dated: July 11, 2018

**SCHEDULE I  
PARTNER SCHOOL/PARTICIPATING SCHOOLS**

<u>Name of School</u>	<u>Cohort Number</u>	<u>Principal Contact Person</u>
Columbia Heights Education Campus	1	Maria Tukeva
Truesdell Education Campus	1	Mary Ann Stinson
Anacostia High School	3	William Haith
Ballou Stay High School	3	Cara Fuller
Roosevelt Stay High School	3	Dewayne Little
Washington Metropolitan High School	3	Ronald Bradford
Luke C. Moore High School	3	Jada Langston

**EXHIBIT A  
TERMS OF SERVICE**

**SUMMIT LEARNING PLATFORM TERMS OF SERVICE**

**Last Update:** \_\_\_\_\_ You can view past versions of the Terms of Service [here](#).

Welcome, and thank you for your interest in the Summit Learning Platform (the “Platform”)! We provide the Platform directly to schools and school districts pursuant to separate Program Agreements.

**PLEASE READ THE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION BECAUSE USING THE SERVICES INDICATES THAT YOU, AS A USER OR AS THE PARTNER SCHOOL, ACCEPT AND AGREE TO BE BOUND BY THEM.**

**PLEASE NOTE THAT THESE TERMS CONTAIN A DISPUTE RESOLUTION AND BINDING ARBITRATION PROVISION IN SECTION 11 HEREOF, INCLUDING A CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH THE SERVICES.**

We, at Summit, have done our best to write the Terms in simple and clear terms. In order to facilitate your understanding of the Terms, we have added a column on the right side of this page that provides short explanations of the legal language in plain English (it starts with, “In essence...”). The plain English explanations **are not** legally binding, but they may be helpful.

**Quick Reference**

- [Agreeing to our Terms](#)
- [The Services](#)
- [Your Use of the Services](#)
- [Privacy and Security](#)
- [Your Information and Content](#)
- [Links, Third-Party Content, and Third-Party Websites](#)
- [User Disputes and Releases](#)
- [Termination and Suspension](#)
- [Additional Terms by User Type](#)
- [Liability, Warranty Disclaimers, and Other Legal Information](#)
- [Governing Law and Dispute Resolution](#)
- [Modification](#)
- [Miscellaneous](#)
- [Contact Information](#)

**1. AGREEING TO OUR TERMS**

Summit Public Schools (“Summit,” “we,” or “us”), a California nonprofit public benefit organization and a 501(c)(3) nonprofit organization, owns and operates the services offered on [www.summitlearning.org](http://www.summitlearning.org), including the Platform, and any other *In essence...By signing up to use the Service, you agree to these terms.*



products and services that the Summit Learning Program may provide now or in the future (collectively, the “Service” or “Services”).

*Welcome to the Summit Learning community!*

Summit offers the Services to schools and school districts (“each, a “Partner School”), and at such Partner Schools’ discretion, to (a) students currently enrolled in Partner Schools (“Student Users”), (b) the parents and legal guardians of Student Users, and (c) Partner Schools’ teachers, employees, officials, or agents (“School Personnel”) ((b) and (c) collectively, “Licensed Users” and Licensed Users together with Student Users, “Users”). A Licensed User or Partner School may be referred to herein as “you”.

By accessing or using the Services, and, in the case of Partner Schools, by executing the Program Agreement, you acknowledge you have read and agree to these Terms of Service (the “Terms”), which are a legal contract between you and Summit. If you accept these Terms on behalf of a Partner School as an authorized representative thereof (an “Authorized Representative”), you represent that Partner School has executed a Program Agreement and you have the authority to bind such entity to the Terms, in which case the terms “you”, “your” or “Member” shall refer to such entity.

Users will also be subject to the Privacy Policy and any posted guidelines, policies or rules applicable to specific features of the Services, which may be posted from time to time (collectively, the “Guidelines”), which are hereby incorporated by reference. If there is any inconsistency between the Terms and any of the Guidelines, the additional Guidelines will prevail to the extent of the inconsistency. For a Partner School and/or its Authorized Representative, when used herein, “Agreement” shall refer to these Terms, the Program Agreement, the Data Privacy Addendum and the Guidelines. For Licensed Users, when used herein, “Agreement” shall refer to these Terms and the Guidelines.

If you are not an Authorized Representative of a Partner School or if you, as a Licensed User, do not agree with these terms and conditions, you must not accept these Terms and you may not use the Services.

The right to access and use the Services is revoked in jurisdictions where it may be prohibited, if any.

## **2. THE SERVICES**

### **2.1 License to Use the Services**

Summit grants Student Users, Licensed Users, and Partner Schools, the non-exclusive, non-assignable, non-transferable, limited right to access and use for no charge the Services during the term of the Program Agreement solely for noncommercial educational purposes and subject to the Agreement. Please note, however, that your carrier’s normal rates and fees, if any, apply to any component of the Services utilizing mobile services, such as text/SMS messaging and data.

*In essence....By signing up for the Summit Learning Program, you have free access to the Platform and the educational materials posted on the Platform*

Summit grants Partner School and its Licensed Users a non-exclusive, non-assignable, non-transferable, limited right and for no charge to use, download, copy, modify, perform, or display educational materials made available in the Services or Program for noncommercial, in-class instructional purposes during the term of the Program Agreement.

*as long as you use them for your education. We ask that you read through the rules contained in these Terms of Service to understand the ways in which you can and can't use the Services.*

## **2.2 Intellectual Property**

The Services and the Summit Technology are intended solely for the personal, non-commercial use of our users and may only be used in accordance with this Agreement. "Summit Technology" means all past, present and future content of the Service, including, all the software, hardware and technology used to provide the Services (including Summit proprietary code and third-party software), user interfaces, materials displayed or performed on the Services, such as text, graphics, articles, photographs, images, illustrations and the design, structure, sequence and "look and feel" of the Services, and derivative works thereof and all other intellectual property, including all Summit Marks. "Summit Marks" means the trademarks, service marks, logos, or any other trade name, trademarks, service marks and other distinctive or proprietary brand features of Summit.

*In essence...You are free to use the Platform and develop content for Summit Learning. However, using the Services will not give you ownership rights to any of Summit's intellectual property. In order to use the Services, each party to this Agreement must comply with all applicable copyright, trademark, and other intellectual property laws.*

Summit Technology is protected by copyright and other intellectual property laws. Using our Service does not give you ownership of any intellectual property rights in the Services or the Summit Technology. You agree that, as between you and Summit, all the intellectual property rights in the Services and Summit Technology, which does not include User Content (as defined below), are owned by Summit or its licensors, and all rights to the Services not expressly granted herein are reserved by Summit. These terms do not grant you the right to use any Summit Marks.

You agree to protect Summit Technology and to abide by all copyright and other intellectual property laws, and to notify Summit of any unauthorized access or use of the Services.

## **2.3 Copyright Protection**

It is Summit's policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act ("DMCA"). For more information, please go to Summit's [DMCA Notification Guidelines](#). Summit may remove any allegedly infringing content without any liability to you. Summit will promptly terminate without notice any User's access to the Service where the User is a "repeat infringer" of copyrights. Summit, however, reserves the right to identify and terminate

*In essence....This section explains how Summit will respond to claims a User has infringed upon someone else's copyright.*

Users under any circumstances it deems appropriate, including after only a single instance of allegedly infringing behavior by that User.

## 2.4 Restrictions on Use

You agree not to, and shall use commercially reasonable efforts to ensure that third parties do not:

- license, sell, rent, lease, loan, assign, distribute, host or otherwise commercially exploit, make available, or sell access to the Services or the Summit Technology to third parties except as specifically permitted under these Terms;
- use, store, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, create derivative works from, display, license, sell or otherwise exploit the Summit Technology for any purposes other than as expressly permitted under this Agreement;
- reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Services, or any component thereof;
- build or support (and/or assist a third-party in building or supporting) products or services in competition with Summit, by any means whatsoever or access the Service to build a product using similar ideas, features, functions, interface or graphics of the Service;
- remove, obscure, or alter any copyright, logo, trademark, or other legal notices displayed in or along with our Services and/or any related assets or otherwise use any of Summit Technology in any manner that creates the impression that such Summit Technology belongs to you or that your use is associated with or with Summit's consent except as otherwise provided herein; or
- circumvent, disable or otherwise interfere with security related features or features that prevent or restrict use or copying of any User Content or Summit Technology or enforce limitations on use of the Service or the User Content and Summit Technology.

*In essence...We require each User to use the Services responsibly. In addition, each User should make sure that third parties use the Services responsibly as well.*

## 2.5 Changes to the Services

From time to time, Summit may implement changes and improvements to the Services, including by conducting maintenance, updating the functionality and look of the Services, and adding or removing functionalities or features. We may also stop providing the Services to you, or add or create new limits to the Services or restrict your access to all or a part of the Service at any time without liability.

You agree that Summit shall not be liable to you, Partner School, or any third party for any modification, suspension or termination of the Services.

*In essence...Summit wants to ensure you can access the Platform at any time you wish to use the Services. Occasionally, we perform maintenance or install improvements to ensure that the Services*

Summit commits to ensuring the continued availability and basic functional performance of the Services and the Program, regardless of any updates that may be implemented, other than routine or periodic maintenance or as set forth in the Program Agreement.

*run smoothly. Accordingly, the Platform might be briefly unavailable from time to time.*

We believe that Users own User Content and that preserving access to such User Content is important. If we discontinue a component of the Services that would affect such access, where reasonably possible, we will give you the opportunity to get such User Content out of that part of the Services. Please see our [FAQ](#) for more information.

*You can use the Platform as long as you don't violate these terms and any applicable law.*

*In addition, we know the content you provide to the Platform is very important to you. Accordingly, we'll give you the opportunity to retrieve your content from the Platform if we change or discontinue a component of the Services.*

### **3. YOUR USE OF THE SERVICES**

#### **3.1 Account Registration & Access**

You may be asked to register for an account in connection with the Services (“User Account”). Alternatively, a Partner School may create accounts (each, an “Administrator Account”) for Licensed Users that are authorized to set up, access, and manage accounts for other Licensed Users and Student Users. When you register or when a Partner School creates a User or Administrator Account for you, you agree to provide accurate, current, and complete information about yourself and to promptly update this information to maintain its accuracy. You are responsible for maintaining the confidentiality of any password and username (“account credentials”) that you are given or select, you will not share your account credentials with anyone, and you are responsible for all activities that occur under your account.

*In essence....There are different ways to set up an account or have an account set up for you. Either way, you'll be responsible for making sure you follow these terms and making sure you protect your account.*

If you have an Administrator Account, you are responsible for (a) maintaining the security and confidentiality of such account and its account credentials; (b) all activities that occur under the Administrator Account; and (c) obtaining all necessary rights, permissions, or consents to access, monitor, use, or disclose any data from accounts of other Users.

Summit reserves the right to refuse registration of or cancel a User Account or Administrator Account in our sole discretion. You may not select or use as a User

Account or Administrator Account a name of another person with the intent to impersonate that person or transfer your account to anyone without express prior written consent of Summit. Summit is not liable for any losses by any party caused by an unauthorized use of your account. Notwithstanding the foregoing, you may be liable for the losses of Summit or others due to such unauthorized use.

You agree to (a) immediately notify Summit of any unauthorized use or breach of security of your account or a student's personally identifiable information, and (b) ensure that you properly log out from your account at the end of each session.

### 3.2 Acceptable Use of the Services

You agree that you will not use the Services to do any of the following or take action that results in any of the following:

- Making defamatory statements regarding Users, other persons, or entities, or using the Services in a commercially unreasonable manner or in any manner that would harm or disparage Summit or the Services;
- Doing anything or posting information that is abusive, harmful, threatening, harassing, defamatory, bullying, stalking, or otherwise objectionable;
- Doing anything unlawful, deceptive, misleading, illegal, unethical, malicious, or discriminatory, obscene, hateful, or sexually-explicit;
- Degrading others on the basis of gender, race, class, ethnicity, national origin, religion, sexual preference, orientation or identity, disability, or other classification or otherwise posting or approving content that: is hate speech, discriminating, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence;
- Violating a person's right to privacy or publicity or otherwise collecting, using, or disclosing data, including personal information, about other Users without consent or for unlawful purposes in violation of any applicable international, federal, state or local law, statute, ordinance or regulation ("Law");
- Infringing on, misappropriating or otherwise violating the copyright, trademark, patent or other intellectual property right of any person, including rights in content available through the Services without prior written permission of Summit or the User, as applicable;
- Collecting, soliciting, or otherwise obtaining login information or accessing an account belonging to someone else;
- Accessing (or attempting to access) any service on the Services by any means other than as permitted in this Agreement or operating the Services on any computers or accounts on which you do not have permission to operate;

*In essence...In order to ensure everyone has a great experience with the Service, please follow our acceptable use policies. During your use of the Services, you cannot, among other things, break the law, threaten, harass or bully anyone, violate someone else's intellectual property, interfere with the function of the Services, or send commercial advertisements. We caution you that any violations of these terms may lead us to terminate your access to the Services.*

- Violating any applicable Law, or advocating illegal activity;
- Using the Services in any manner that is harmful to minors. Without limiting the foregoing, you will not transmit or post any content anywhere on the Service, including any User Submission, that violate child pornography laws or that otherwise violates any child sexual exploitation laws. Summit absolutely does not tolerate this and will report any suspected instances of child pornography, including reporting any of your User registration information, to law enforcement, including the National Center for Missing and Exploited Children;
- Facilitating or encouraging any violations of the Agreement, the Privacy Policy or our policies, including;
- Interfering with the operation, appearance, security or functionality of the Services;
- Advertising, soliciting, or transmitting commercial advertisements or any other unsolicited messages regardless of the medium;
- Impersonating a Summit employee, or any other person, or falsely stating or otherwise misrepresenting your affiliation with any person or entity;
- Uploading viruses or other malicious code, files, or programs;
- Using automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Services, including any User Content or information, or otherwise access the Services; or
- Employing misleading email or IP addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin on any content transmitted to or through the Services.

Additionally, the unauthorized use of our Services may result in civil and/or criminal liability.

**You agree to immediately notify us at [acceptableuse@summitlearning.org](mailto:acceptableuse@summitlearning.org) upon learning of any known or suspected unauthorized use or access of your account or the Services.**

#### **4. PRIVACY AND SECURITY**

Your privacy is extremely important to us, and we take great care to limit what we collect and how we use it, and to enable you to understand our policies. Please read our Privacy Policy which explains how we treat and protect your information when you use the Services, including Student Data. In addition, please read the model Data Privacy Addendum, a form of which Summit and your Partner School have entered

*In essence....In addition to these terms, please read our Privacy Policy and the Data Privacy Addendum provided to your school. In order to*

into, which describes the duties and responsibilities to protect Student Data transmitted to Summit from the Partner School.

*protect your data, we've implemented a number of protections and restrictions.*

## **5. YOUR INFORMATION AND CONTENT**

### **5.1 User Content and Teacher Content**

The Services enable Users and Partners Schools to provide, share or post certain content or information, including, but not limited to, audio recordings, photographs, videos, documents, online educational resources, or other materials, Student Data (as defined in the Data Privacy Addendum), Teacher Content (as defined below) and Feedback, (as defined below) (collectively, "User Content"). User Content may be used by Summit in connection with the Services and may be visible to or shared with Summit, other Partner Schools, and certain other Users. Please visit our Privacy Policy for additional information on the types of information different Users are able to provide.

*In essence....The Platform provides an opportunity for teachers and users to develop and share content and provide feedback to Summit.*

School Personnel may contribute educational content, create answers to assessments, create derivative works (e.g., completion of assignments, projects, etc.), and transmit said data and content within the Partner School's systems through the Services (collectively, "Teacher Content").

Partner Schools and Users may submit feedback, comments or suggestions for improvements to the Services (in written, oral, or any other form) ("Feedback").

### **5.2 Ownership**

Consistent with applicable Law, as between Summit and you, you retain all ownership rights you have in any User Content. Summit does not claim any ownership rights in the User Content. Please note that, while you retain ownership of your User Content, any template or layout in which you arrange or organize such User Content through tools and features made available through any of our Service are not proprietary to you, and the rights to such template or layout will remain with us or our service providers.

*In essence....When you share content with us, you are merely giving us permission to use the content to provide the Services to you and other users. If you own the content, you still own the content when you share it with us. Summit does not take any ownership of the content you provide to the Program.*

### **5.3 License**

**A. User Content.** You agree that you and your Partner School shall, jointly and severally, be responsible for any User Content you share through the Services. Partner School acknowledges and agrees that all User Content shared in the Services is the responsibility of the Partner School, and the User from whom the User Content originated. Partner School or the Licensed User, as applicable, represents, covenants, and agrees on behalf of yourself or your Student User that the submitting User has all required rights to submit, post, upload, or otherwise own, use, or disseminate the User Content it submits or uploads without violating third party rights.

*In essence....If you decide to share content with us, you are giving us permission to make the content available for use by other teachers and students using the Services. Our use of any personal information you submit is subject to our Privacy Policy. Most teachers participating in Summit Learning Program actively share content. However, we understand that some teachers may not wish to share their content with others, therefore we give teachers the opportunity to restrict sharing. In addition, teachers or their school can let us know if and when they wish to delete the content they have submitted at any time and this permission will end.*

You hereby grant to Summit a limited, non-exclusive, sublicensable (as necessary to provide the Services, including distributing Teacher Content), worldwide, royalty-free, and transferable (only to a successor) right and license to:

- (1) use, host, copy, store, distribute, publicly perform and display, publish (in whole or in part), modify, and create derivative works from (such as changes we make so that your content works better with our Service) User Content as necessary to provide, improve and make the Services available to you and other Users, including through any future media in which the Services may be distributed;
- (2) use, modify, prepare derivative works, publish, distribute and sublicense Feedback without any compensation to you;
- (3) use and disclose metrics and analytics regarding the User Content in an aggregate or other non-personally identifiable manner (including, for use in improving our Services);
- (4) use any de-identified User Content for any lawful purpose subject to the Data Privacy Addendum; and
- (5) use for other purposes permitted by the Data Privacy Addendum and the Summit Privacy Policy.

Summit will only share and use your personal information in accordance with Summit's current Privacy Policy.

**B. Default License for Teacher Content.** By default, if Partner School or its School Personnel contribute Teacher Content, such Teacher Content will be licensed royalty-free to Summit under the Creative Commons Attribution 4.0 License ("CC License"), which is available at <https://creativecommons.org/licenses/by/4.0/>. Such Teacher Content shall be available to the Partner School and its Users, but Summit may also sub-license such Teacher Content to other Users of the Platform at other schools. You acknowledge and agree that Teacher Content will be licensed under the CC License unless you "opt-out" of sharing to other schools. Such Teacher Content will continue to be licensed under the CC License until School Personnel "turns off" such sharing for that particular Teacher Content. However, you understand and agree that if you "turn-off" sharing for Teacher Content (i) the Teacher Content will be



available to Licensed Users within the Partner School only; (ii) the change is prospective and does not terminate any sub-licenses to the underlying Teacher Content previously granted by Summit to any third parties (such as teachers from other schools and districts), and (iii) Summit thereafter shall not grant any additional sub-licenses for the underlying Teacher Content to third parties such as other schools.

**C. License Termination.** The license in Section 5.3.(A)(1) above will terminate when you or your Partner School (i) delete any User Content containing intellectual property rights (like images or videos) or personally identifiable information (such as that in Student Data); (ii) delete your account; or (iii) with respect to the ability to sub-license Teacher Content to third parties, turn off sharing of Teacher Content as set forth in 5.3(B). Such termination may not apply to User Content that has been shared with others, including previously sublicensed Teacher Content, or User Content that may be in or related to messages sent through Summit. User Content may persist in backup copies for a reasonable period of time following deletion (but will not be available to others).

#### **5.4 Representations Regarding Teacher Content.**

If Partner School or its School Personnel contribute Teacher Content under the CC License, Partner School and the School Personnel represent and warrant that Teacher Content does not contain any Student Data and that Partner School and School Personnel have the right and authority to grant the license and other such rights as may be necessary.

*In essence...If you contribute teacher content, you can't upload it unless you have the right to share it. Also, we cannot accept teacher content if it includes personal information about students.*

#### **5.5 Your Responsibilities and Summit's Rights.**

You acknowledge and agree that Summit reserves the right, at any time and without prior notice, to pre-screen, reject, move, edit, delete, or remove any User Content contributed to the Services that we, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or otherwise harmful to the Services or Users, consistent with applicable Law, but we do not assume the obligation. The submission of any User Content through any third party links or applications made available or accessible in the Services shall be subject to such third parties' terms and privacy policies. Additionally, Summit does not guarantee that we will publish any of your User Content.

*In essence...we do not guarantee that we will publish any of your content or information, and although we encourage you to share content, we might remove it from the Platform for a variety of reasons including violations of our acceptable use policies. You (or your school) are*

By submitting User Content, you represent and warrant that you have all rights in the User Content, including to disclose such User Content and to grant us the foregoing licenses to the User Content. User Content must comply with these Terms, including

guidelines under the caption “Acceptable Use of the Services” and any other specific User (e.g., teacher, parent, or student) requirements. If you include links to external websites, including Third-Party Content and Websites (as described below), in User Content, you must verify the quality and substance of each external link. You are solely responsible for any such links. Summit is not liable or responsible for any links created by you, or for any damages, direct or indirect, arising therefrom.

All information posted or transmitted through the Service, including User Content, is the responsibility of the person that posted it and/or the Partner School, and Summit will not be liable for any errors or omissions in any such content. Summit cannot guarantee the identity of any other Users with whom you may interact in the course of using the Services, or the authenticity of any data which Users may provide about themselves. You access User Content at your own risk and will be solely responsible for any damage or loss to any party resulting therefrom.

## **6. LINKS, THIRD-PARTY CONTENT, AND THIRD-PARTY WEBSITES**

The Services may include content originating from and created by other users and third parties, including information about third-party products and services; links to third-party websites that are not owned or controlled by Summit; and/or third-party applications, such as YouTube video, including, but not limited to, third-party applications that are integrated directly with the Services through application programming interfaces (each an "API") (“Third-Party Content and Websites”). Third-Party Content and Websites may allow you to interact through and communicate with third parties. The inclusion of Third-Party Content and Websites on the Services does not imply our affiliation or endorsement of such Third-Party Content and Websites. You agree that we are not responsible for any such Third-Party Content and Websites, including the accuracy, integrity, quality, legality, usefulness, safety, privacy practices or intellectual property rights of or relating to such Third-Party Content and Websites, and you access such Third-Party Content and Websites at your own risk. Summit has no obligation to monitor such Third-Party Content and Third-Party Websites. You are solely responsible for any accounts you create, data or User Content you share or store, and/or your interactions with or on Third Party Content and Websites, all of which are governed by any terms or policies for such Third Party Content and Websites. If required to provide the Services, you hereby authorize and grant Summit a right to use any names, passwords, API keys or other keys for such Third Party Content and Websites solely as necessary to provide the Services you.

You understand that by using the Services you may be exposed to Third-Party Content and Websites, and that you use the Services at your own risk.

Further, you understand that by using the Services you are still required to follow our terms of Services and Privacy Policy in connection with your interactions with Third-Party Content and Websites.

*responsible for making sure that you have all the rights in any information or content you submit to us, including the right to grant Summit the permission we need to provide the Service.*

*In essence...The Platform includes content from other users and other entities that Summit does not own or control. If you use any third-party applications, websites or content in conjunction with the Services, you are responsible for your interactions with that content or on those applications or websites. Plus, keep in mind that those applications or websites have their own terms of use and privacy policies you must follow. If you share any content from third-party applications onto our service, you are still required to follow our Terms of Service and Privacy Policy.*

**7. USER DISPUTES AND RELEASES**

Summit is not responsible for the actions, content, information or data of other third parties, including other Users. You are solely responsible for your interactions with other Users of the Services, and any other parties with whom you interact through the Services. Summit reserves the right, but has no obligation, to become involved in any way with these disputes.

*In essence....There are many users who utilize the Platform. Although we expect every user to follow our guidelines, we are not responsible for the actions or submissions of users. We'll enforce our acceptable use guidelines, but we won't get involved in disputes between users.*

If you have a dispute with one or more Users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes, including damages for loss of profits, goodwill, use, privacy or data.

**8. TERMINATION AND SUSPENSION**

These Terms shall remain in full force and agreement while you use the Services unless your account is terminated as provided in the Agreement.

*In essence....We might suspend or terminate your account if you violate our rules or the law. If we suspend or terminate you, we will provide notice to your school. If you wish to terminate your account, your school can tell you if you are eligible and what the process will be.*

Certain Licensed Users may terminate their use of the Services; provided, however, that their Partner School may require satisfaction of certain requirements prior to termination of Administrator Accounts or accounts of School Personnel. If you wish to terminate your account, you must start the process by contacting your Partner School.

You acknowledge that, if you knowingly, intentionally or negligently violate these Terms, Summit may suspend your and/or Partner School's license to the Program and the Services, in whole or in part, until the violation is stopped or terminate your and/or Partner School's license to the Program and the Services. In the event that the Partner School fails to correct the violation after reasonable notice from Summit, Summit may terminate Partner School's license to the Services, in whole or in part, as necessary to stop the violation. Partner School agrees and acknowledges that if Partner School or any of its Users violates the terms of this Section 8, Summit shall bear no responsibility or liability for any damages or claims resulting from or in connection with such actions. In the event Summit suspends or terminates a User's use of the Services or account, Summit will promptly provide notice to the Principal Contact Person at your Partner School.

Upon termination of your account, your right to use the Service will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

## 9. ADDITIONAL TERMS BY USER TYPE

### 9.1 School Personnel

If you are School Personnel accessing the Services on behalf of a Partner School, you agree that you are acting on behalf of (or have permission from) your Partner School to accept the Agreement and to use the Services. You must obtain any necessary approvals from your Partner School's authorities and administrators before using the Services. Upon termination of your employment, engagement, or contractual relationship with the Partner School, you must cease use of the Services and return and cease using all login information in your possession. If at any time you learn a user of the Services claims to be affiliated with your Partner School who is not, in fact, affiliated with your Partner School, you agree to notify Summit immediately at [info@summitlearning.org](mailto:info@summitlearning.org).

*In essence....Before you use the Services, your school must give you permission.*

### 9.2 Students

**A. Authorization to Use the Services.** Partner School and its Authorized Representative understand and acknowledge that (1) the Children's Online Privacy Protection Act ("COPPA") does not directly apply to nonprofit organizations such as Summit; (2) COPPA sets forth guidelines regarding the collection and use of personal information from children under 13 years of age; (3) Summit voluntarily complies with COPPA's guidelines regarding Student Users under the age of 13; and (4) by entering into the Agreement, Partner School has authorized Summit to collect and use certain personal information from Student Users under 13 years of age as set forth in the Agreement. Please see our FAQ and OnGuard Online for more information.

*In essence....Students can't use the Services unless their school gives them permission. Please contact your school to determine whether your school has additional requirements that must be satisfied before a student can use the Service.*

Partner School, through Authorized Representatives or Administrator Accounts, may grant permission to Student Users to have User Accounts and use the Services. School Personnel understand and acknowledge that Student Users are not authorized to use the Services unless a Partner School has granted permission to such Student Users for the Student Users to have User Accounts and use the Services. If School Personnel create User Accounts for Student Users, School Personnel acknowledge and agree School Personnel has authority from the Partner School to do so.

Partner School will be solely responsible (and hereby agrees that Summit is not responsible) for: (1) providing any legally required notices and obtaining any necessary permissions, including permissions under COPPA for children under 13 years of age for Student Users to use the Services; and (2) providing any legally required means for a parent or legal guardian to review or correct any Student Data in the Services. Under no circumstances will Summit be liable for the School Personnel's failure to consult their school's authorities and administrators or for failing to obtain permission when required.

**B. Clever and Other Third-Party Integrations.** School Personnel is solely responsible for monitoring, auditing and otherwise ensuring the quality of any data exposed to Summit through the Clever API or other Third-Party Learning Management Systems.

### 9.3 Parents/Legal Guardians

Partner School, including through School Personnel, may send an invitation to parents and legal guardians to use the Services and create accounts for the parents and legal guardians who accept the invitation to use the Services (“Parent Account”). Partner School will provide Summit with a parent’s or legal guardian’s email address and/or phone number, and information linking the parent to an individual Student User. Upon receiving this information, Summit, will automatically send the parent/legal guardian of a Student User an email or SMS text message with details regarding how to activate a Parent Account. Parent Accounts allow parents/legal guardians to track their child’s progress in the Services.

*In essence...we give schools the ability to invite parents and legal guardians of their students to use the Platform. In doing so, they have unique access to the students education. In addition, through the Platform, we permit schools to engage with families by communicating through emails, text messages, and the Platform itself.*

Summit,, on behalf of and at the direction of a Partner School, may send parents/legal guardians informational text messages from your Partner School, including, but not limited to, messages: (1) providing information related to their or their child’s use of the Services; (2) supplying information that they request; or (3) responding to their inquiries regarding their account or use of Summit. If you as a parent/legal guardian, provide your telephone number to your child’s school, you are consenting to Summit (on behalf of and at the direction of your child’s school) sending informational text messages closely related to the Partner School’s mission.

Summit does not charge you for our text message features. But message and data rates may apply, so depending on your plan with your wireless or other applicable provider, you may be charged by your carrier or other applicable provider.

If you no longer want to receive such text messages, you may text STOP at any time. After doing so, we will send you confirmation of your opt-out via text message. For more information, please see our [FAQ](#).

## 10. LIABILITY, WARRANTY DISCLAIMERS, AND OTHER LEGAL INFORMATION

### 10.1 Representations & Warranties

You warrant, represent and agree that you will not provide any User Content or otherwise use the Services in a manner that (i) infringes, violates or misappropriates another’s intellectual property rights, rights of publicity or privacy, or other rights; (ii) violate any applicable Law or which would render Summit in violation of any applicable Law; (iii) is harmful, fraudulent, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable; or (iv) jeopardizes the security of your account or the Services in any way, such as allowing someone else

*In essence...we want you to collaborate, share content, and enjoy the Program, but, if you do, make sure you have the permission to share any content you provide. In*

access to your account or password. Additionally, you represent, warrant and agree that you (i) possess all rights necessary to provide your User Content and grant Summit the rights in this Agreement (ii) you will comply with the Laws in connection with your use of the Service, and (iii) you are solely responsible for providing notices and obtaining any consents required by applicable Law for Users to use the Services or to provide User Content.

*addition, make sure the content is appropriate for the Platform. Be sure you follow all applicable laws.*

## **10.2 Warranty Disclaimer**

YOUR USE OF THE SERVICES IS ENTIRELY AT YOUR OWN RISK. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE SERVICES, SOFTWARE, AND ANY ASSOCIATED SUMMIT TECHNOLOGY, USER CONTENT OR CONTENT ARE PROVIDED “AS IS”, “WITH ALL FAULTS,” AND “AS AVAILABLE.”

*In essence...We are offering the Services “as is.”*

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUMMIT AND OUR AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS (COLLECTIVELY, “SUMMIT” FOR PURPOSES OF SECTION 10.2 AND SECTION 10.3 HEREIN) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (1) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE, QUIET ENJOYMENT, NO LIENS AND NO ENCUMBRANCES; (2) THE WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS AND NON-INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY PERSON; (3) THE WARRANTIES ARISING THROUGH COURSE OF DEALING OR USAGE IN TRADE; AND (4) THE WARRANTIES RELATING TO THE ACCURACY, RELIABILITY, CORRECTNESS, OR COMPLETENESS OF DATA OR CONTENT (INCLUDING USER CONTENT) MADE AVAILABLE ON THE SERVICES OR OTHERWISE BY SUMMIT.

IN PARTICULAR, SUMMIT MAKES NO WARRANTY THAT (I) THE SERVICES WILL MEET YOUR NEEDS OR REQUIREMENTS OR THE NEEDS OR REQUIREMENTS OF ANY OTHER PERSON; (II) YOUR USE OF THE SERVICES WILL BE TIMELY, SECURE, ACCURATE, COMPLETE, UP-TO-DATE, FREE OF VIRUSES, UNINTERRUPTED, OR FREE FROM ERRORS, LOSS, CORRUPTION, ATTACH, VIRUSES, OR HACKING; AND (III) ANY INFORMATION OBTAINED BY PARTNER SCHOOL AS A RESULT OF THE SERVICES WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN ANY PART OF THE SERVICES PROVIDED TO PARTNER SCHOOL WILL BE CORRECTED.

IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED OR STATUTORY WARRANTIES TO APPLY TO

YOU, THE ABOVE EXCLUSIONS WILL APPLY TO YOU TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO PARTNER SCHOOL'S OR ITS LICENSED USERS' DEVICES, COMPUTERS, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

### **10.3 Indemnity**

You agree, to the extent permitted by your state's laws, to indemnify, hold harmless, and defend Summit, and our affiliates, licensors, partners, and service providers, and each of their respective officers, directors, contractors, agents, employees, successors and assigns from and against any and all demands, claims, damages, liabilities, judgments, fines, interest, penalties, losses, costs, expenses and harms, including without limitation reasonable attorneys' fees and fees of other professional advisers, arising out of or in connection with (i) your access to, use or misuse of the Services, (ii) your online conduct, (iii) your violation or breach of these Terms or the Agreement, (iv) your failure to comply with any applicable Laws (including any failure to obtain or provide any necessary consent), (v) the infringement by you, or any third-party using your account, of any of the intellectual property or other rights of any person, or (vi) any of your dealings or transactions with other persons resulting from use of the Services, including breach or alleged breach of any interaction, agreement, or policy between you and any other user.

*In essence....This section explains your role in the event there is a dispute between someone and Summit. If someone files a claim against Summit that relates to something you've done with our products or services, then the onus is on you and you will be held responsible for any costs that Summit incurs as a result.*

You shall not settle any such claim without the prior written consent of Summit. Summit will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it. These obligations will survive any termination of these Terms.

### **10.4 Limitation of Liability to Users**

UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, SHALL SUMMIT OR OUR SUCCESSORS, AFFILIATES, CONTRACTORS, EMPLOYEES, LICENSORS, SUPPLIERS, PARTNERS OR AGENTS BE LIABLE TO USERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, COST OF COVER, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF SUMMIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM OR RELATING TO (i) THIS AGREEMENT; (ii) YOUR USE OR THE INABILITY TO USE THE SERVICES, CONTENT, THIRD-PARTY CONTENT, THIRD-PARTY WEBSITES, THIRD-PARTY APPLICATIONS, OR

*In essence....Summit is providing the Services without charge. We cannot compensate you for anything that might indirectly result from the Services not working as intended. If you incur any direct damages as a result of the Services, the amount we might owe*

USER SUBMISSIONS; OR (iii) ANY INTERACTION WITH ANY THIRD-PARTY THROUGH OR IN CONNECTION WITH THE SERVICE, INCLUDING OTHER USERS. *you will be capped at \$100.*

IN NO EVENT WILL SUMMIT OR OUR SUCCESSORS, AFFILIATES, CONTRACTORS, EMPLOYEES, LICENSORS, SUPPLIERS, PARTNERS OR AGENTS BE LIABLE TO USERS IN THE AGGREGATE (FOR ALL POTENTIAL CLAIMS BY YOU) FOR ANY DAMAGES INCURRED IN EXCESS OF ONE HUNDRED DOLLARS (\$100).

BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUMMIT'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

FOR ANY USER LOCATED WITHIN CALIFORNIA (AND ELSEWHERE AS PERMITTED BY LAW), THE FOLLOWING SHALL APPLY: YOU ALSO EXPRESSLY WAIVE ANY AND ALL RIGHTS AND BENEFITS CONFERRED UPON YOU, NOW OR IN THE FUTURE, UNDER THE TERMS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." BY AGREEING TO THESE TERMS, YOU ARE STATING YOU UNDERSTAND AND ACKNOWLEDGE THE SIGNIFICANCE AND EFFECTS OF SUCH WAIVER AND MAKE SUCH WAIVER VOLUNTARILY.

LIMITATION OF LIABILITY WITH RESPECT TO PARTNER SCHOOLS IS SET FORTH IN THE PROGRAM AGREEMENT.

## **11. GOVERNING LAW AND DISPUTE RESOLUTION**

### **11.1 Governing Law**

Except as otherwise required by applicable Law, for Licensed Users the Agreement and any dispute arising from or relating to the Agreement are governed by and must be construed in accordance with the laws of the State of California, United States, without regard to conflict of law principles. You further agree to accept service of process by mail. By using the Services, you waive any claims that may arise under the laws of other states, countries, territories or jurisdictions.

*In essence....Summit is based in California so our Program, our Services, and our Agreement are governed under California law.*

Except with respect to the arbitration provisions contained herein in Section 11.2, the parties consent to exclusive personal jurisdiction and venue in the courts located in San Mateo County, California.



## 11.2 Arbitration and Class Action Waiver

With respect to any and all disputes arising out of or in connection with the Services, Summit and you agree to negotiate in good faith and undertake reasonable efforts to cooperate with one another in order to achieve a mutually satisfactory resolution. To the extent permitted by Law, if you and Summit do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration as described in this section. **You and Summit are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury.**

*In essence....These sections establish the process if there is a dispute between you and Summit.*

Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. Any court with jurisdiction over the parties may enforce the arbitrator's award.

To the extent permitted by Law, any claim or dispute under or relating to the Agreement must be filed within one year in an arbitration proceeding. The one-year period begins when the claim or notice of dispute first could be filed. If a claim or dispute isn't filed within one year, it's permanently barred.

If the arbitration provision in this Section is found to be unenforceable or invalid, the parties agree that any suit or proceeding arising out of or relating to these Terms will be brought in the federal or state courts, as applicable, in San Mateo County, California, and each party irrevocably submits to the jurisdiction and venue of such courts.

### 11.2.1 Federal Arbitration Act

You and Summit ("the parties" or "both parties") agree that the Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

### 11.2.2 Initial Dispute Resolution

In the event of a dispute, claim, or controversy arising out of or relating to the Agreement or the Services, any person's access to and/or use of the Services, and/or the provision of content, services, and/or technology on or through the Services (collectively, "**Claims**"), both parties must first give the other notice of the Claim. This notice must include a brief written statement with the name, address, and contact information of the party giving it, as well as the facts giving rise to the Claim and the relief requested. You must send any such notice to Summit by email to [info@summitlearning.org](mailto:info@summitlearning.org) AND by U.S. Mail to Summit Public Schools, 780 Broadway Street, Redwood City, California 94063. If we have your contact information, we will send any such notice to you by U.S. Mail and your email address. The parties must first attempt to resolve any Claims through informal negotiation within thirty (30) days from the date that any notice of a Claim is sent. The parties shall use reasonable, good faith, efforts to settle any Claim through consultation and good

faith negotiations. After thirty (30) days, you or Summit may resort to the other alternatives described in this Section 11.2. Notwithstanding the foregoing, the notice and thirty (30) day negotiation period required by this paragraph shall not apply to Claims concerning patents, copyrights, moral rights, trademarks, and trade secrets and claims of piracy or unauthorized use of the Services.

### **11.2.3 Binding Arbitration**

To the extent permitted by law, Summit and you agree that all disputes arising under the Agreement that cannot be settled through informal negotiation will be settled exclusively through confidential binding arbitration in San Mateo County, California, U.S.A. The arbitrator's award shall be binding and may be entered as a judgment in a court of competent jurisdiction. You agree that Summit may seek any interim or preliminary relief from a court of competent jurisdiction in San Mateo County, California, U.S.A, necessary to protect its rights or property pending the completion of arbitration. **If your entity is a U.S. public and accredited educational institution and your consent to binding arbitration is expressly prohibited by the laws of the state within the U.S. in which your educational institution is domiciled, then this subsection 11.2.3 is hereby waived.**

The arbitration shall be conducted by a single arbitrator, governed by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures (collectively, "JAMS Rules"), as modified by these Terms, and administered by JAMS. The JAMS Rules and fee information are available at [www.jamsadr.org](http://www.jamsadr.org) or by calling JAMS at 1-800-352-5267.

The decision of the arbitrator will be in writing and binding and conclusive on you and Summit, and judgment to enforce the decision may be entered by any court of competent jurisdiction. You and Summit agree that dispositive motions, including without limitation motions to dismiss and motions for summary judgment, will be allowed in the arbitration. The arbitrator must follow these Terms and can award the same damages and relief as a court, including injunctive or other equitable relief and attorney's fees. You and Summit understand that, absent this mandatory arbitration provision, you and Summit would have the right to sue in court and have a jury trial.

If any clause within this subsection 11.2.3 is found to be illegal or unenforceable, that specific clause will be severed from this Section, and the remainder of its provisions will be given full force and effect.

### **11.2.4 Class Action Waiver**

To the extent permitted by Law, the parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. You and Summit agree that each may bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or

unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate Claims. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

### **11.2.5 Confidentiality**

All aspects of the arbitration proceeding, including, but not limited to, the award of the arbitrator and compliance therewith, shall be strictly confidential. Both parties agree to maintain confidentiality unless otherwise required by Law. This paragraph shall not prevent you or Summit from submitting to a court of law any information necessary to enforce the Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

### **11.3 Changes to this Section**

Summit will provide 60-days' notice of any changes to Section 11. Changes will become effective on the 60th day, and will apply prospectively only to any Claims arising after the 60th day. If a court or arbitrator decides that this subsection on "Changes to this Section" is not enforceable or valid, then this subsection 11.3 shall be severed from Section 11, and the court or arbitrator shall apply the first Arbitration and Class Action Waiver (or similarly named) section in existence after you first installed, accessed, or used any of the Services.

## **12. MODIFICATION**

**12.1 Modifications of the Agreement.** Summit may modify the Agreement to, for example, reflect changes to the law or changes to the Services. You should look at these Terms regularly. We last modified the Terms on the date stated above. We'll post notice of modifications to the Agreement on this page or elsewhere on the Services and/or as required by Laws. Your continued use of the Services, following notice of the changes to the Agreement, constitutes your acceptance of our amended terms, policies or guidelines. If you do not agree to the modified Agreement, you should discontinue your use of the Services.

*In essence...These terms might change in the future. If they do, we'll tell you on this page or somewhere within the Platform. If you keep using the Platform after the terms change, then you have accepted those changes.*

**12.2 Modifications relating to Personally Identifiable Information.** Summit will not materially change how personally identifiable information contained in Student Data is used or shared under the Agreement without advance, prominent notice to affected Users and the Principal Contact Person of the related Partner School. If a change with respect to how personally identifiable information contained in Education Records is used or shared under the Agreement has a material adverse impact on the Partner School or the Licensed Users thereof and an Authorized Representative of such Partner School does not agree to the change, the Partner School must notify Summit within thirty (30) days of receiving the notice of change as described under the caption "Contact Information." If an Authorized Representative of a Partner School provides

*If we significantly change how your personal information is used, we'll give you advance notice and tell your school. If you don't like the new changes, we'll give you an*

such a notice to Summit, then the Partner School and related Users shall be governed by the Agreement in effect immediately prior to the change until the end of the then-current Term. If the Partner School renews or extends its use of the Services, the Services will be renewed or extended will be renewed under Summit's then-current Agreement.

*opportunity to contact us and an opportunity to opt out of the change.*

### **13. MISCELLANEOUS**

If any provision of these Terms is invalid or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable Laws and the remaining provisions will continue in full force and effect. You agree that, except as otherwise expressly provided in these Terms, there shall be no third party beneficiaries to these Terms. Our failure to enforce any provisions of the Terms or respond to a breach by you or anyone else shall not in any way waive our right to enforce subsequently any terms or conditions of the Terms or to act with respect to similar breaches. You must not assign these Terms or any rights or obligations herein without the prior written consent of Summit and any attempted assignment in contravention of this provision is null and void and of no force or effect. Summit has the right to assign these Terms, and any of its rights or obligations herein. These Terms are binding upon each party and its respective successors, heirs, trustees, administrators, executors and permitted assigns. The parties are independent contractors and not employees, partners, agents, or joint venturers of the other and have no employment relationship whatsoever. No party will make any commitment, by contract or otherwise, binding upon the other party or represent that it has any authority to do so. This is a non-exclusive agreement. These Terms are the entire agreement of the parties and supersede all previous or contemporaneous agreements between the parties relating to its subject matter. In connection with your use of the Services, you may be asked to consent to policies or terms and conditions in addition to these Terms. Please read these separate policies and terms carefully before making any use of such portions of the Services. Any separate terms will not vary or replace these Terms regarding any use of the Services, unless otherwise expressly stated.

### **14. CONTACT INFORMATION**

Please direct any questions, complaints or claims related to the Services or your use of the Services to [info@summitlearning.org](mailto:info@summitlearning.org).

*In essence...If you need to reach out to us, please reach out via email at [info@summitlearning.org](mailto:info@summitlearning.org) and we will do our best to respond in a timely manner.*



**EXHIBIT B**  
**DATA PRIVACY ADDENDUM**

# **DATA PRIVACY ADDENDUM**

**Modeled after Version 2.0 of the Student Data Privacy Consortium's Model Contract**

**District of Columbia Public Schools**

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**and**

**SUMMIT PUBLIC SCHOOLS**